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Supreme Court of the United States

OCTOBER TERM, 1962

No. 251

ANGELIKA L. SCHNEIDER, PETITIONER,

vs.

DEAN RUSK, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 14, 1962
CERTIORARI GRANTED OCTOBER 15, 1962

SUPREME COURT OF THE UNITED STATES

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[fol. A]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,959

ANGELIKA L. SCHNEIDER, Appellant,

v.

CHRISTIAN A. HERTER, individually and as Secretary of State, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Joint Appendix

[fol. 1]

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Division

Civil Action No. 324-60

ANGELIKA L. SCHNEIDER, Badenbergerstrasse 20, Koeln-Elirenfeld, Germany, Plaintiff,

v.

CHRISTIAN A. HERTER, individually and as Secretary of State

COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT, AND OTHER RELIEF—Filed February 1, 1960

Plaintiff by her attorneys, complaining of defendant, alleges that:

1. Plaintiff is a naturalized citizen of the United States and is a resident of West Germany, residing with her hus-

band in a suburb of Cologne, Germany. Her address there is Badenbergerstrasse 20, Koeln-Ehrenfeld, Germany.

2. The defendant, Christian A. Herter, is an individual doing business and residing in the District of Columbia with offices at 21st Street and Virginia Avenue, N.W., Washington, D.C., and is Secretary of State of the United States. Said defendant is sued individually and a. Secretary of State.

[fol. 2] 3. Jurisdiction of this Court arises under Sections 11-305 and 11-306 of the District of Columbia Code, under 28 U.S.C. Sections 2201, 2202 and 2282 and under 5 U.S.C. Section 1009. Jurisdiction is also based on the Fifth and Eighth Amendments to the Constitution of the United States.

4. Plaintiff was born on May 28, 1934 in Rimsting-am-Chiemsee, in Bavaria, in what is now the Federal Republic of Germany. She was at birth a national of Germany. She arrived in this country together with her family in April 1939, being then not quite five years of age.

5. Plaintiff became a citizen of the United States on December 4, 1950 and in 1951 a certificate of derivative citizenship was issued to plaintiff (Certificate No. A-218517), declaring that she had become a citizen of the United States on December 4, 1950.

6. Plaintiff lived in the United States continuously from 1939 to 1954. She attended grade school in Croton-on-the-Hudson, New York and high school in both Cornwall-on-Hudson, New York and Flushing, Queens, New York, graduating in June 1950. Thereafter she attended Smith College, Northampton, Massachusetts, graduating in June 1954, with the degree of Bachelor of Arts. From 1954 to 1955 she studied at the University of Bern, Switzerland on a scholarship given by the Institute for International Relations in New York, and from 1955 to April 1956 she was a full-time student at the Sorbonne in Paris. In April 1956 she returned to the United States residing in Nutley, New Jersey and took employment in New York City.

7. On June 6, 1956 the plaintiff left the United States arriving in Germany on June 12, 1959 for the purpose of

marrying Dr. Dieter Schneider, a German citizen and an attorney-at-law practicing in Cologne. The marriage took place in Cologne on July 4, 1956. Plaintiff has since lived continuously in West Germany with her husband except for one six-week trip for a family visit to the United States.

8. In Germany there were born to plaintiff and her husband two sons, one on June 21, 1957, and the other on November 6, 1958. Both of these sons were, at the time [fol. 3] of birth, and are now, citizens of the United States duly registered as such with the United States Consulate.

9. Plaintiff at all times at least from 1954 to June 1959 was in possession of a valid United States passport. This passport was amended after their births to include her two sons.

10. On or about August 21, 1959, the United States Consulate in Dusseldorf, which had possession of the United States passport issued to plaintiff and her two sons in connection with a request for extension of expiration date, deleted from it her name and crossed out her picture. The passport was returned to her as valid only in the names of her two infant sons aged respectively two and one years of age, but not for the plaintiff, their mother.

11. In September 1959, the plaintiff was requested by the American Consulate in Dusseldorf to surrender to that Consulate her Naturalization Certificate. She complied with this request under protest, the Naturalization Certificate being returned with a letter by her attorney specifically denying the Consulate's contention that she had forfeited her United States citizenship.

12. By letter dated November 25, 1959 from the United States Consulate General at Dusseldorf, plaintiff was notified that the Department of State on September 25, 1959 had decided that she had lost her American citizenship pursuant to Section 352(a)(1) of the Immigration and Nationality Act of 1952 and she was served with a "Certificate of the Loss of the Nationality of the United States".

13. The actions of the United States Consulate described in paragraphs 10, 11 and 12 above were all taken pursuant

to the authority of the defendant, Christian A. Herter, and he has authorized, ratified, and ordered such actions.

14. The defendant, Christian A. Herter, is illegally denying the plaintiff her rights and privileges as a citizen of the United States. He has revoked her United States passport, taken away her Certificate of Naturalization, and issued to her a Certificate of the Loss of the Nationality of the United States, all in violation of the Constitution of the United States.

[fol. 4] 15. The illegal actions of the defendant heretofore described have caused and are causing the plaintiff to suffer irreparable injury. Said actions have prevented the plaintiff from enjoying diplomatic protection by the United States, from traveling under a United States passport, and have denied plantiff other privileges of American citizenship. Further, under German law, when the plaintiff's United States passport expired and was not renewed, she was and is as a stateless person in danger of being required to leave Germany and her husband. Plaintiff now has a temporary identification paper from the local authorities as a stateless person permitting her to remain in Germany for a limited time and with no assurance of extension.

16. The actions of defendant complained of herein purport to be based solely upon the authority of Section 352(a)(1) of the Immigration and Nationality Act of 1952. Such actions and the statute pursuant to which they purport to have been taken, are illegal and a deprivation of liberty and property without due process of the law, in violation of the Fifth Amendment of the Constitution of the United States because (1) they purport to expatriate a naturalized American citizen against her will solely because of three years' residence in the country of her origin, and (2) because they discriminate between native born and naturalized citizens. Such purported deprivation of citizenship also constitutes cruel and unusual punishment in contravention of the Eighth Amendment to the Constitution.

17. Unless this Court grants the relief requested there exists no other adequate remedy for the irreparable injury to which plaintiff is being subjected.

Wherefore, plaintiff prays that:

(1) the Court issue a temporary restraining order, a preliminary injunction and a permanent injunction enjoining the defendant, his successors and subordinates, from carrying out or enforcing the provisions of Section 352(a)(1) of the Immigration and Nationality Act of 1952 or from denying the plaintiff any of the rights and privileges of a citizen of the United States or from withholding from the plaintiff a United States passport on the ground that she is not a citizen of the United States;

[fol. 5] (2) that the Court order the defendant to expunge from the records of the Department of State its ruling that the plaintiff is no longer a national of the United States, and to revoke and nullify the Certificate of the Loss of the Nationality of the United States, heretofore issued to the plaintiff;

(3) that the Court order defendant to return to plaintiff her Certificate of Naturalization;

(4) that the Court order defendant to issue to the plaintiff a United States passport;

(5) that the Court render a declaratory judgment that the plaintiff is a citizen of the United States and is entitled to all of the rights and privileges of a citizen of the United States;

(6) that the Court grant such further relief as may be just, lawful and equitable in the premises.

Milton V. Freeman, Charles A. Reich, 1229—19th Street, N.W., Washington 6, D.C., Horst Kurnik, 27 William Street, New York 5, New York.

Of counsel: Arnold, Fortas & Porter, 1229—19th Street, N.W., Washington 6, D. C.

Date: February 1, 1960

[fol. 6]

IN THE UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed March 25, 1960

Comes now defendant by his attorney, the United States Attorney, and moves to dismiss the complaint on one or more of the following grounds: (1) The Court lacks jurisdiction over the person of the plaintiff; (2) The Court lacks jurisdiction over the subject matter; and (3) The plaintiff has failed to exhaust her administrative remedies under Section 360 of the Immigration and Nationality Act of 1952.

Oliver Gasch, United States Attorney, Edward P. Troxell, Principal Assistant United States Attorney, John F. Doyle, Assistant United States Attorney, Harold D. Rhynedance, Jr., Assistant United States Attorney.

[Certificate of Service]

IN THE UNITED STATES DISTRICT COURT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT—Filed April 2, 1960

Plaintiff Angelika L. Schneider, upon the pleadings herein and upon the attached affidavit of the plaintiff, moves the Court to grant summary judgment for the plaintiff, ordering, adjudging and decreeing as follows:

(1) that the defendant, his successors and subordinates be enjoined from carrying out or enforcing the provisions of Section 352(a)(1) of the Immigration and Nationality Act of 1952 or from denying the plaintiff any of the rights and privileges of a citizen of the United States or from withholding from the plaintiff a United States passport on the ground that she is not a citizen of the United States.

(2) that the defendant expunge from the records of the Department of State its ruling that the plaintiff is no longer a national of the United States, and revoke and

nullify the Certificate of the Loss of the Nationality of the United States, heretofore issued to the plaintiff;

[fol. 7] (3) that the defendant return to plaintiff her Certificate of Naturalization;

(4) that the defendant issue to the plaintiff a United States passport;

(5) that the plaintiff is declared to be a citizen of the United States and is entitled to all of the rights and privileges of a citizen of the United States.

This motion is made pursuant to Rule 56 (F.R.C.P.) on the ground that there is no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law.

Respectfully submitted,

Milton V. Freeman, Charles A. Reich, Horst Kurnik,
Attorneys for Plaintiff.

Of counsel: Arnold, Fortas & Porter, 1229 19th Street, N.W., Washington, D.C.

Date: April 2, 1960

AFFIDAVIT OF PLAINTIFF ANGELIKA L. SCHNEIDER

I, Angelika L. Schneider, being duly sworn, depose and say:

1. That I am the plaintiff in the above-entitled action.

2. That I am 25 years of age, a married woman living with my husband and two infant sons in a suburb of Cologne, Germany.

3. My husband is Dieter Schneider, a lawyer practicing in Cologne, Germany. He is a partner in the firm of Boden, Klonz, Oppenhoff, Andreae, Mathy and Schneider of Cologne.

4. I feel myself an American and I value my American citizenship highly. Practically all my relatives, except my

husband and children, live in the United States and are American citizens. These include two brothers, a half brother and sister.

[fol. 8] 5. I regard the United States as my country. I have had all my schooling (grade school, high school and college) in the United States except for some post-graduate work in Switzerland and France.

6. I am advised by the Department of State that I am no longer an American citizen and am not entitled to passport and nationality privileges as an American because I am married to a German citizen and living with him and our children in Germany where he resides and works. I am told that I have lost my citizenship because the country in which I live and in which my husband lives and works happens to be the one where I was born. I am also told that if I had married a resident of any other country and gone to live with him and raise children in the country where he lived and worked, I would not lose my American citizenship. Moreover, if I had been born rather than naturalized an American citizen I would also be able to conduct a normal family life with my husband in Germany. Instead, as a result of the action of the State Department in taking away my passport and my naturalization certificate, I am faced with a choice of giving up my husband and family life with him, or of being forced to give up my country. I do not wish to accept either alternative. I wish to be an American citizen which I feel myself to be and also to remain with my husband and our children in Germany where he practices his profession.

7. I have been able to acquire from the local authorities in Germany an identification paper as a stateless person

1961 A.L.S.

which expires in February ~~1960~~ and a temporary residence permit which may be withdrawn at any time. I hope that this arrangement can be extended until a decision of this case is reached, but I have no assurance that any extension can be given. The action in question places me in a position where I have no nationality. In addition, even if I could get an extension of my temporary permit and stateless persons identification paper, I am forbidden by that identification paper to travel as an American. Fur-

ther, I cannot go with my husband who is required to travel to various countries in Europe and to the United States, without obtaining first special visas which, as a stateless person, are very difficult to obtain; whereas as an Ameri- [fol. 9] can citizen I would not even need a visa in most countries, the passport being sufficient. But, more important, wherever I may be I can call on no government as my own to protect me.

8. I regard myself as an American. I have spent my entire childhood and youth in the United States and regard it as my country. From the time I was five until I came to Germany in 1956 to be married, I had been in Germany only briefly in 1954 and 1955 travelling through and have neither felt nor had any connection with that country. I have no political loyalty or allegiance to either Germany or any other country except the United States.

9. I was born in Rimsting-am-Chiemsee, Bavaria, in what is now Western Germany, on May 28, 1934. Before I was 5 years of age I was brought to the United States by my mother and father and lived there with them and my two brothers and my mother's two children by a previous marriage. We lived in Croton-on-Hudson and Cornwall-on-Hudson, New York, and I went to grammar school in Croton and attended high school in Cornwall and Flushing, New York. I graduated from Flushing High School in 1950.

10. I was naturalized derivatively on December 4, 1950 through the naturalization of my mother, and in 1951, was given a Certificate of Naturalization (Certificate No. A-218517), which certified to this fact. I do not have this certificate since I was required to surrender it to the State Department as I shall explain below.

11. In the fall of 1950 I entered Smith College, in Northampton, Massachusetts, and graduated in 1954. On graduation from Smith I accepted a scholarship at Bern University, Switzerland given to me by the Institute of International Education of New York City. I studied there for two semesters from the winter of 1954 through the summer of 1955. In the fall of 1955 I went to Paris and

enrolled at the Sorbonne as a full-time student for the winter term 1955-1956.

12. When I was preparing to leave for Switzerland in the fall of 1954 my uncle, Horst Kurnik, Esquire (my mother's brother) gave a farewell party for me at his home in Nutley, New Jersey. Shortly before that, my uncle had [fol. 10] met a young German lawyer, Dr. Dieter Schneider, who had come to New York on a Fulbright Research Scholarship and was working as a visiting trainee with an international trademark and patent firm in New York (Langer, Parry, Card & Langer) and studying at New York University Law School. My uncle invited him to the farewell party and this was where I first met my future husband.

13. I next saw him about a year later while passing through Cologne. Thereafter, while I was studying in Paris, in about February 1956, we became engaged. I went back to the United States in April. I lived in Nutley, New Jersey and took a job in New York City. I worked there until my fiance and I decided on a date for our marriage. I then left the United States in June 1956 for Germany. I arrived there June 12 and we were married in Cologne on July 4, 1956.

14. Except for a six-week trip to the United States in September and October 1957 to show my first-born to my relatives, I have not been back to the United States since 1956. I intend to live with my husband and to go with him wherever he may be. Since his law practice is in Cologne, it appears likely that he and I will remain there for the indefinite future, although I would hope to be able to go to the United States frequently.

15. We now have two sons, one Dieter Laurens, born June 21, 1957, and the other Marc Robert, born November 6, 1958. They were both registered, upon birth, at the United States Consulate in Dusseldorf.

16. I have been in possession of an American passport since September 7, 1954 and my sons were included in my last passport, both with their photographs and descrip-

tions. When I applied in August 1958, at the expiration of my most recent passport, for a new passport, I was not granted the normal two-year passport. Instead, the American Consulate in Dusseldorf issued me a passport limited until June 10, 1959, which was approximately the expiration date of a three-year period beginning with the date of my arrival in Germany for the purpose of marrying Dr. Schneider.

[fol. 11] 17. When, on June 9, 1959, I went to the United States Consulate in Dusseldorf and requested an extension, the extension was refused to me. It was later granted as to my children. This action was taken by crossing out my picture and my name in the passport, but leaving the pictures and the names of my children and granting them an extension of the passport. Under this passport, my infant sons may travel as American citizens but I am not able to accompany them as such.

18. As I understand it, under German law I was entitled to reside in Germany with my husband so long as I had a valid passport from any other country. When I lost my United States passport by the refusal of the American Consul to extend it, the local police asserted that German law required my expulsion and it was only after much discussion and difficulty that I was granted permission to stay for an interim period and issued an identification paper.

19. In September 1959 I was requested by the American Consulate in Dusseldorf to surrender to them the Naturalization Certificate which had been issued to me in 1951 certifying that I was naturalized in the United States as of December 4, 1950. The Naturalization Certificate was in the possession of my uncle, Horst Kurnik, Esquire, attorney at law, at 27 William Street, New York 5, New York, who, at my instruction, surrendered the Certificate under protest. A copy of his letter of September 22, 1959 to the United States Consulate General in Dusseldorf enclosing the Naturalization Certificate is attached as Exhibit A.

20. In August 1959, the American Vice Consul at Dusseldorf had prepared a Certificate of Loss of Nationality

in my case, and sent it to the State Department for approval. This approval was given by the State Department on September 25, 1959. By letter of November 25, 1959, a copy of this certificate was sent to me. I am attaching hereto as Exhibit B to this affidavit a copy of the letter of the American Consulate General dated November 25, 1959 and the enclosed Certificate of Loss of Nationality.

[fol. 12] 21. The letter of the American Consulate indicated that an appeal lay to the Board of Review on the Loss of Nationality in the State Department in Washington. Such an appeal was duly taken and by letter dated January 20, 1960, my counsel was advised that the Board had "affirmed the previous administrative decision" that I had "expatriated" myself. I am told that this action of the Board is the "final administrative determination" of the State Department and that I have no recourse except to this Court.

22. I understand that the statutes involved apparently require the results reached by the State Department. I cannot believe, however, that the Constitution of the United States permits me to be faced with the cruel choice of surrendering either my family or my country. I have, accordingly, directed the institution of the necessary proceedings to establish what I believe to be the true and just conclusion that I, although naturalized, have the same freedom as any American girl who received her citizenship by birth to marry where I please and to live with my husband and family without giving up my American citizenship.

Angelika L. Schneider

[Stamp:]

Germany
City of Dusseldorf
Consulate General
Of the United States
Of America

Subscribed and sworn to before me, Keith M. Heim, Vice Consul of the United States of America at Duesseldorf, Germany this 15th day of March, 1960.

Keith M. Heim, American Vice Consul, duly commissioned and qualified.

[SEAL]

Service No. 0866
Tariff Item No. 45
Fee Paid US $-(2.50)
Local Cy DM 10.50 PAID

[fol. 12a]

EXHIBIT A TO AFFIDAVIT

Registered Mail September 22, 1959

U. S. Consulate General
Cecilienallee
Duesseldorf
West Germany

Re: Angelika L. Schneider,
nee Schaeffer

Gentlemen:

At the request of my above client, I am enclosing herewith her original Naturalization Certificate, No. A-218517.

At the same time, I wish to point out to you that this surrender of her citizenship certificate to you shall not be construed as yielding to your Department's contention that she has forfeited her United States citizenship. It is, on the contrary, her contention that the facts underlying her residence in Germany fall within the exemption provisions of the Immigration and Naturalization Act (Public Law 414), respectively that so much of that law as differentiates between the natural born and naturalized citizen violates the Constitution of the United States.

Respectfully,

Horst Kurnik

HK/f
enclosure

[fol. 12b]

EXHIBIT B TO AFFIDAVIT

[GREAT SEAL OF THE U. S. A.]

221—SCHNEIDER, Angelica Liasse
TKO: gw

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

American Consulate General,
Duesseldorf, Germany,
5, Cecilien Allee,
November 25, 1959

Dear Mrs. Schneider:

Reference is made to * * * the Certificate of the Loss of the Nationality of the United States submitted in your case by this Consulate General to the Department of State, Washington, D. C.

The Department of State has confirmed your loss of American nationality under Section 352 (a) (1) of the Immigration and Nationality Act of 1952 * * * for having a continuous residence for three years in the territory of a foreign state of which she was formerly a national, i.e., in Germany, since June 12, 1956. A copy of the certificate is enclosed for your retention.

You are hereby notified that you have the privilege of appealing to the Board of Review of the Passport Office, Department of State, Washington, D. C., with regard to the decision that you have lost your American nationality. You should understand that the Board of Review must consider the case on the basis of the evidence which has previously been submitted or may subsequently be submitted and will be compelled to hold that you have lost your American nationality if such evidence brings your case within the law. If you think that the law has not been given sufficient weight, or if you wish to submit new or additional

evidence, you may present the appeal. The appeal may be made through a foreign service office or through a relative, friend or attorney in the United States. No formal application for reconsideration need be made but a statement should be submitted preferably under oath giving the grounds of appeal and should be supported by such documentary evidence as may be available.

Very truly yours,

For the Consul General:

/s/ THEODORE K. OSGOOD
American Vice Consul

Registered.
Encl.: Cert. of Loss.

Mrs. Angelica Liasse Schneider,
20 Baadenbergerstr.,
Koeln-Ehrenfeld.

[fol. 12c]

Foreign Service of the United States of America

CERTIFICATE OF THE LOSS OF THE NATIONALITY OF THE UNITED STATES

(This form has been prescribed by the Secretary of State pursuant to Section 301 of the Act of October 14, 1940; 54 Stat. 1171 and Section 358 of the Act of June 27, 1952, 66 Stat. 272)

Consulate General of the United States of)
) ss.:
America at Duesseldorf, Germany)

I, Leon PUKACH, hereby certify that, to the best of my knowledge and belief, Angelica Liasse SCHNEIDER nee Schaeffer was born at Rimsting Germany, on May 28, 1934:
(Town or city) (State or country) (Date)

That she resides at 20 Baadenbergerstrasse, Koeln-
(Street) (City)
Ehrenfeld, Germany;
(State)

That she last resided in the United States at 309 Grant
(Street)
Avenue, Nutley 10, New Jersey;
(City) (State)

That she left the United States on June 6, 1956;
(Precise date should be given)

That she acquired the nationality of the United States by virtue of naturalization before the U.S. District Court, in New York City, on December 4, 1950.
If a national by birth in the United States, so state; if naturalized, give the name and place of the court in the United States before which naturalization was granted and the date of such naturalization

her on June 12, 1959.

That she has expatriated ~~himself~~ under the provisions of Section 352 (a)(1) ~~of Chapter IV of the Nationality Act of 1940~~[1] Chapter 3 of Title III of the Immigration and Nationality Act of 1952[1] by having a continuous residence for three years in the territory of a foreign state of which she was formerly a national, i.e., in Germany, since June 12, 1956.
(The action causing expatriation should be set forth succintly)

That the evidence of such action consists of the following: Mrs. Schneider's statement that she arrived in Germany on June 12, 1956, and her presence at this office on August 14, 1959.
(Here list the sources of information and such documentary evidence as may be available concerning the action causing expatriation of the individual concerned)

In testimony whereof, I have hereunto subscribed my name and affixed my office seal this 26th day of August,
(Month)
1959.

[SEAL]

/s/ Leon Pukach
Leon (Signature) Pukach
Vice Consul
(Title of officer)

Approved by the Department of State on September 25, 1959.

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[1] Strike out whichever is inapplicable.

[fol 13]

IN THE UNITED STATES DISTRICT COURT

APPLICATION FOR CONVENING OF A THREE JUDGE COURT—Filed April 15, 1960

Plaintiff applies pursuant to Sections 2282 and 2284 of the United States Judicial Code for the convening of a three judge court to hear the above-entitled matter.

As reason therefor plaintiff states that the Complaint herein filed prays for an injunction restraining the enforcement, operation and execution of Section 352(a)(1) of the Immigration and Nationality Act of 1952, an Act of Congress, for repugnance to the Fifth and Eighth Amendments to the Constitution of the United States. Plaintiff has also filed a Motion for Summary Judgment requesting inter alia the issuance of an injunction in the terms prayed for in the Complaint.

Examination of the papers, we believe, will indicate the substantial nature of the question involved.

Respectfully submitted,

Milton V. Freeman, Charles A. Reich, Horst Kurnik.

Of Counsel: Arnold, Fortas & Porter, 1229—19th St., N.W., Washington 6, D.C.

Dated: April 15, 1960

[Certificate of Service]

IN THE UNITED STATES DISTRICT COURT

OPPOSITION TO PLAINTIFF'S APPLICATION FOR CONVENING A THREE-JUDGE COURT—Filed April 15, 1960

Comes now defendant by his attorney, the United States Attorney, and opposes plaintiff's application for convening a three-judge court pursuant to 28 USC §§2282 and 2284.

Defendant opposes the application on the following grounds: First, the Court is without jurisdiction to entertain this suit and thus the complaint is subject to dismissal

at the outset by the single District Judge to whom the case is first assigned. In support of this ground, defendant [fol. 14] hereby incorporates herein by reference his previously filed Motion to Dismiss, together with the supporting memorandum of points and authorities, which is now awaiting consideration and determination.

Second, if the Court has jurisdiction to entertain this suit, plaintiff has failed to present a substantial constitutional question as might warrant the convening of a three-judge court. Defendant believes that plaintiff's contentions to the contrary are not supported by the authorities upon which she relies in her recently filed Motion For Summary Judgment.

For the Court's information, defendant intends to oppose plaintiff's Motion For Summary Judgment and to file a cross-motion if the Court denies his Motion To Dismiss or grants plaintiff's application. Plaintiff's counsel has assured counsel for defendant that, after determination of the pending application and motion to dismiss, a short but reasonable period of time would be afforded by stipulation or otherwise to oppose plaintiff's motion and to file a cross-motion for summary judgment.

Oliver Gasch, United States Attorney, Edward P. Troxell, Principal Assistant United States Attorney, John F. Doyle, Assistant United States Attorney, Harold D. Rhynedance, Jr., Assistant United States Attorney.

[Certificate of Service]

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING MOTION TO DISMISS, GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONVENE THREE-JUDGE COURT—July 19, 1960

Upon consideration of defendant's motion to dismiss in each of the above entitled actions, of defendant's motion in each of the above entitled actions to consolidate said actions

and one other action, and of the application of plaintiff in each of the above entitled actions to convene a three-judge court, and a full and fair hearing having been afforded the parties hereto as to said motions and applications, and it [fol. 15] appearing to the Court that the above entitled actions should not be dismissed but that no substantial constitutional question is presented in said actions, it is by the Court this 19th day of July 1960:

Ordered that defendant's motion to dismiss in Civil Action No. 324-60 and in Civil Action No. 777-60 be and the same are hereby denied (*Perkins* v. *Elg*, 69 App. D.C. 175; 99 F. 2d 408, affirmed 307 U.S. 325. *Frank* v. *Rogers*, 102 U.S. App. D.C. 367, 253 F. 2d 889. Rule 57 Federal Rules of Civil Procedure) and it is further

Ordered that defendant's motion in Civil Action No. 324-60 and in Civil Action No. 777-60 to consolidate be and the same are hereby granted except as to *Cort* v. *Herter*, Civil Action No. 868-60, and it is further

Ordered that the applications of plaintiffs Angelika L. Schneider and Anne d'Arbeloff Guerrieri to convene a three-judge court be and the same are hereby denied (*Lapides* v. *Clark*, 85 U.S. App. D.C. 101, 176 F. 2d 619, cert. den. 338 U.S. 860, reh. den. 338 U.S. 888; *Luria* v. *U.S.*, 231 U.S. 9; *Mackenzie* v. *Hare*, 239 U.S. 299; *Perez* v. *Brownell*, 356 U.S. 44).

Burnita Shelton Matthews, Judge.

In the United States District Court

Answer—Filed July 29, 1960

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

Answering specifically the numbered paragraphs of the complaint, defendant avers as follows:

1. Defendant admits the allegations contained in paragraph 1 of the complaint, except insofar as he denies that plaintiff is now a naturalized citizen of the United States.

[fol. 16] 2. Defendant admits the allegations contained in paragraph 2 of the complaint.

3. Defendant denies the allegations contained in paragraph 3 of the compalint.

4 and 5. Answering the allegations contained in paragraphs 4 and 5 of the complaint, defendant admits the following: Plaintiff, as Angelica Liasse Shaeffer, was born of German parents on May 28, 1934 at Rimsting, Bavaria, Germany, in what is now a part of the Federal Republic of Germany. Plaintiff came to the United States in 1940 and resided here until September 1954. Her mother was naturalized as a citizen of the United States in 1946 and her father was naturalized as a citizen of the United States on December 4, 1950, at which time plaintiff also acquired the status of a naturalized citizen of the United States under the provisions of Section 314(a) of the Nationality Act of 1940. In 1951 a certificate of derivative citizenship (Certificate No. A-218517) was issued to plaintiff, declaring that she had become a citizen of the United States on December 4, 1950.

6. Defendant admits the allegations contained in paragraph 6 of the complaint.

7. Answering the allegations contained in paragraph 7 of the complaint (as corrected and amended by the stipulation entered into and submitted to this Court by counsel for the respective parties on or about February 10, 1960), defendant admits as follows: Plaintiff, on June 6, 1956, left the United States and arrived in the Federal Republic of Germany on June 12, 1956, for the purpose of marrying Dr. Dieter Schneider, a German citizen and an attorney-at-law practicing in Cologne, Federal Republic of Germany. Plaintiff married her present husband, the said Dr. Schneider, in Cologne on July 4, 1956. Plaintiff has resided continuously in the Federal Republic of Germany since June 12, 1956 and has not returned to the United States during such period, except for one trip to the United States of about six weeks duration for the purpose of visiting her

family. It is averred that plaintiff intends to continue residing in the Federal Republic of Germany with her [fol. 17] husband and children so long as her husband remains there and that she has no definite intention to return to the United States to reside.

8. Answering the allegations contained in paragraph 8 of the complaint, defendant admits as follows: In the Federal Republic of Germany there was born to plaintiff and her husband two sons, one on June 21, 1957, and the other on November 6, 1958. Both children acquired United States citizenship at birth under the provisions of Section 301(a)(7) of the Immigration and Nationality Act of 1952, and have been duly registered as United States citizens with a United States Consulate in the Federal Republic of Germany. It is averred that the two children, notwithstanding their United States citizenship, have also acquired German nationality by reason of their birth through the said German citizen father.

9. Answering the allegations contained in paragraph 9 of the complaint, defendant admits as follows: Plaintiff, as Angelica L. Shaeffer, was issued on September 7, 1954 United States Passport No. 468672. She was registered as a national of the United States residing abroad on October 26, 1954, by the United States Consulate at Bern, Switzerland. On June 21, 1956, Passport No. 468672 was renewed by the United States Consulate at Dusseldorf, Germany. On August 20, 1957, the passport was amended by the United States Consulate at Dusseldorf, Germany, to read in her married name, Angelica Schneider, and to include the sole child then born to her. On August 28, 1958, plaintiff was issued a new United States Passport, No. 296, which was valid only to June 11, 1959. On June 10, 1959, plaintiff executed an application for the extension of her registration and Passport No. 296 to August 28, 1960. Such application was referred by the United States Consulate at Dusseldorf, Germany, to the Department of State for consideration and decision. The requested extension was denied by the Department of State on the basis that she was considered to have expatriated herself under the provisions of Section 352(a)(1) of the Immigration and Nationality Act of 1952 unless she could establish that her case came within one

of the exemptions provided in Section 353 of that Act. [fol. 18] Thereafter, plaintiff, together with one of her present counsel, visited the United States Consulate at Dusseldorf, Germany, on August 14, 1958, for the purpose of clarifying her citizenship status. At that time, plaintiff and her counsel did not contest the fact that she had lost her citizenship under the provisions of Section 352(a)(1) of the Immigration and Nationality Act of 1952 or that she was unable to establish that her case came within one of the exemptions specified in Section 353 of that Act. The birth of the second of the two aforesaid children was reported on that occasion to the said Consulate.

10. Answering the allegations contained in paragraph 10 of the complaint, defendant admits as follows: On or shortly prior to August 21, 1959, the United States Consulate in Dusseldorf, which had possession of the United States passport issued to plaintiff in connection with the aforesaid request for extension of the expiration date, deleted from such passport her name and crossed out her picture but did not do so with respect to the name or picture of her first born child. The passport, which was amended to exclude her but to include both of her two said children, was returned to her as valid only in the names of such children.

11. Answering the allegations contained in paragraph 11 of the complaint, defendant admits as follows: On August 26, 1959, a United States Consular Officer at Dusseldorf certified that plaintiff expatriated herself under the provisions of Section 352(a)(1) of the Immigration and Nationality Act of 1952 by having a continuous residence for three years in the territory of a foreign state of which she was formerly a national, i.e., in Germany, since June 12, 1956. Such certification was approved by the Department of State on September 25, 1959. Plaintiff in September 1959 was requested by the United States Consulate in Dusseldorf to surrender to that Consulate her Naturalization Certificate. Plaintiff complied with this request under protest, the Naturalization Certificate being returned with a letter by her attorney specifically denying the Consulate's contention that she had forfeited her United States citizenship.

12. Answering the allegations contained in paragraph 12 of the complaint, defendant admits as follows: The United [fol. 19] States Consulate at Dusseldorf was advised of the aforesaid approval by the Department of State of the above-described certification by the Consulate respecting plaintiff's expatriation under Section 352(a)(1) of the Immigration and Nationality Act of 1952. Thereafter, by letter dated November 25, 1959 from the United States Consulate General at Dusseldorf, plaintiff was notified that the Department of State on September 25, 1959, had decided that she had lost her United States citizenship pursuant to Section 352(a)(1) of the foregoing Act, and she was served with a "Certificate of the Loss of the Nationality of the United States."

13. Defendant admits that the actions described in the allegations contained in paragraphs 10, 11 and 12 of the complaint to the extent they have been admitted in this answer were all taken pursuant to the authority of defendant, and he has authorized, ratified, and ordered such actions. Further answering, defendant avers as follows: By letter dated January 5, 1960, plaintiff through counsel appealed to the Board of Review On The Loss of Nationality, Passport Office of the Department of State, from the aforesaid decision of the said Department that she had expatriated herself on June 12, 1959 under Section 352(a)(1) of the Immigration and Nationality Act of 1952. Upon review and consideration, the said Board of Review On The Loss of Nationality affirmed such previous decision and, on January 20, 1960, advised plaintiff through her counsel in writing to this effect. It is further averred that plaintiff's first name, while spelled as "Angelika" in the complaint, is shown as "Angelica" in official records of the Department of State, including certain documents signed by her.

14. Defendant denies the allegations contained in paragraph 14 of the complaint, except insofar as he admits that he has caused plaintiff's United States passport to be revoked, her Certificate of Naturalization to be taken away from her, and a Certificate of the Loss of the Nationality of the United States to be issued to her.

15. Answering the allegations contained in paragraph 15 of the complaint, defendant avers as follows: The allegations contained in the first and second sentences of such paragraph are denied, except insofar as it is admitted that plaintiff no longer is entitled to the diplomatic [fol. 20] protection of the United States, to travel under a United States passport, and to enjoy certain other privileges of United States citizenship. Further answering, defendant is not required to answer the allegations contained in the third and fourth sentences of the said paragraph of the complaint since they are irrelevant and immaterial but, if an answer be required, defendant avers that he is without knowledge or information sufficient to form a belief as to the truth of such allegations.

16. Answering the allegations contained in paragraph 16 of the complaint, defendant avers as follows: As respects the allegations contained in the first sentence of such paragraph it is admitted that the actions of defendant complained of in the complaint are based solely upon the authority specified in Section 352(a)(1) of the Immigration and Nationality Act of 1952. Further answering, defendant is not required to answer the remaining allegations of such paragraph as they are conclusions of law but, if an answer be required, they are denied.

17. Defendant denies the allegations contained in paragraph 17 of the complaint. The remaining allegations of the complaint are denied.

Third Defense

The complaint should be dismissed for the reason that the Court lacks jurisdiction over the person of the plaintiff.

Fourth Defense

The complaint should be dismissed for the reason that the Court lacks jurisdiction over the subject matter.

Fifth Defense

The complaint should be dismissed for the reason that plaintiff has failed to exhaust her administrative remedies

under Section 360 of the Immigration and Nationality Act of 1952.

Sixth Defense

Even assuming arguendo that the administrative remedies available to plaintiff under Section 360 of the Immigration and Nationality Act of 1952 are not exclusive, they are the specified remedies which in the circumstances of the instant case must first be exhausted by plaintiff before the Court may obtain jurisdiction over the person of [fol. 21] the plaintiff and the subject matter. The complaint fails to reflect any basis upon which plaintiff's failure to exhaust the specified remedies provided by Section 360 of the Immigration and Nationality Act of 1952 may be excused. Hence, the complaint should be dismissed by reason of plaintiff's failure to exhaust such remedies.

Seventh Defense

The complaint fails to raise a substantial constitutional question.

Oliver Gasch, United States Attorney, Edward P. Troxell, Principal Assistant United States Attorney, John F. Doyle, Assistant United States Attorney, Harold D. Rhynedance, Jr., Assistant United States Attorney.

[Certificate of Service]

In the United States District Court

Affidavit of Horst Kurnik in Support of Plaintiffs Motion for Summary Judgment—Filed August 9, 1960

State of New York)
County of New York) ss.:

Horst Kurnik being duly sworn deposes and says:

1) I am one of the attorneys for plaintiff in the above entitled action.

2) I am making this affidavit with reference to some of the allegations set forth in 9th of defendant's Answer served on July 29, 1960.

3) In that Nr. 9 of his Answer defendant alleges as follows:

> "Thereafter, plaintiff, together with one of her present counsel, visited the United States Consulate at Dusseldorf, Germany, on August 14, 1958, for the purpose of clarifying her citizenship status. At that time, plaintiff and her counsel did not contest the fact that she had lost her citizenship under the provision of Sec. [fol. 22] 352(a)(1) of the Immigration and Nationality Act of 1952 or that she was unable to establish that her case came within one of the exemptions specified in Sec. 353 of that act."

4) My records reveal that I visited together with the plaintiff the United States Consulate at Duesseldorf on August 14, 1959 (and not 1958 as alleged in the Answer). At that time plaintiff had come to the office at the request of the U.S. Consul.

5) When we appeared before the consul the official in charge indicated that her passport had to be cancelled. He also urged plaintiff to sign a statement setting forth all the facts which he did not explain to me or her.

6) My immediate reply was that I was advising plaintiff not to sign any written statements or to make any oral statements whatsoever and thereupon plaintiff refused to make any statements.

7) At the same time I protested the forfeiture of plaintiff's citizenship as being illegal under the Immigration and Nationality Act of 1952 and the U.S. Constitution and I indicated that in the event her passport would be cancelled and her citizenship would be considered forfeited appropriate actions would be inaugurated in order to contest such action by Defendant or his agents.

8) Subsequently plaintiff was requested by the U.S. Consul in Duesseldorf to surrender her Naturalization Certificate. This was done by me under protest as is specifically admitted in the last sentence of paragraph 11 of the Answer filed by defendant herein. My letter of

protest is attached to plaintiff's affidavit already filed in support of this motion.

9) Accordingly the allegation that "Plaintiff and her counsel did not contest the fact that she had lost her citizenship" is not in accordance with the facts.

Horst Kurnik

[Jurat dated August 5, 1960]

[fol. 23] [Filed August 11, 1960]

Defendant's Motion for Judgment on the Pleadings

Comes now defendant by his attorney, the United States Attorney, and moves for judgment on the pleadings for the reason that on the pleadings defendant is entitled to judgment as a matter of law.

Oliver Gasch, United States Attorney, Edward P. Troxell, Principal Assistant United States Attorney, John F. Doyle, Assistant United States Attorney, Harold D. Rhynedance, Jr., Assistant United States Attorney.

[Certificate of Service]

In the United States District Court

Opposition to Motion for Judgment on the Pleadings—Filed August 15, 1960

1. Plaintiff opposes the motion for judgment on the pleadings and requests the Court to consider the affidavits of Angelika L. Schneider and Horst Kurnik filed herein not only as affidavits in support of plaintiff's motion for summary judgment but also in opposition to defendant's motion for judgment on the pleadings.

2. The grounds for opposition as a matter of law to the defendant's motion for judgment on the pleadings are

the same reasons advanced as a matter of law in support of plaintiff's own motion for summary judgment.

Respectfully submitted,

Milton V. Freeman, 1229—19th Street, N.W., Washington 6, D. C., Horst Kurnik, 37 William Street, New York 5, New York.

Of counsel: Arnold, Fortas & Porter, 1229—19th Street, N.W., Washington 6, D.C.

Date: August 15, 1960

[fol. 24]

IN THE UNITED STATES DISTRICT COURT

ORDER AND JUDGMENT—August 17, 1960

Plaintiff having moved for summary judgment and defendant having moved for judgment on the pleadings, and the Court having considered the complaint, the answer and the affidavits filed herein as well as the previous proceedings herein, and being fully advised in the premises, and being advised of the order entered in this matter on July 19, 1960 by Judge Matthews, holding that no substantial constitutional question is presented by said complaint, and the Court being of the opinion that Section 352(a)(1) of the Immigration and Nationality Act of 1952 is not repugnant to the Constitution of the United States,

It is hereby

Ordered, Adjudged and Decreed:

1. That the plaintiff's motion for summary judgment be and it is hereby denied, and

2. That judgment on the pleadings be and it is hereby entered for defendant, and the complaint be and it is hereby dismissed.

George L. Hart, Jr., Judge.

Date: August 17, 1960

No objection as to form:

Milton V. Freeman, Counsel for Plaintiff.

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed August 17, 1960

Notice is hereby given that Angelika L. Schneider, the plaintiff above-named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the Order and Judgment entered in this action on August 17, 1960.

Respectfully submitted,

Milton V. Freeman, Horst Kurnik,

Of Counsel:

Date: August 17, 1960

[fol. 25]

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,959—September Term, 1961

ANGELIKA L. SCHNEIDER, Appellant,

v.

DEAN RUSK, individually and as Secretary of State, Appellee.

No. 16,002—September Term, 1961

DEAN RUSK, Secretary of State, Appellant,

v.

ANGELIKA L. SCHNEIDER, Appellee.

Appeals from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Chief Judge, and Bazelon and Burger, Circuit Judges.

JUDGMENT—May 11, 1962

These appeals came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and were argued by counsel.

On consideration whereof, It is ordered and adjudged by this court

(1) that in No. 15,959 the judgment of the District Court for the defendant on the pleadings and dismissing the complaint is hereby affirmed on the authority of *Lapides* v. *Clark*, 85 U.S. App. D.C. 101, 176 F. 2d 619 (1949).

(2) that the appeal in No. 16,002 from the order of the District Court denying defendant's motion to dismiss the complaint is dismissed for the reason that the order is not appealable. *Catlin* v. *United States*, 324 U.S. 229, 236.

Per Curiam.

Dated: May 11, 1962

[fol. 28] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 29]

SUPREME COURT OF THE UNITED STATES

No. 251—October Term, 1962

ANGELIKA L. SCHNEIDER, Petitioner,

vs.

DEAN RUSK, etc.

ORDER ALLOWING CERTIORARI—Filed October 15, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.